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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,704	12/05/2005	Steen Hojgaard Christensen	04-501	7276

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EXAMINER	
BEKKER, KELLY JO	

ART UNIT	PAPER NUMBER
1794	

MAIL DATE	DELIVERY MODE
02/23/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/519,704	CHRISTENSEN ET AL.	
	Examiner	Art Unit	
	Kelly Bekker	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12/29/08*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-26* is/are pending in the application.

4a) Of the above claim(s) *1-11 and 24-26* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *12-23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Group II, claims 12-26 and species 1, claims 21-23 in the reply filed on December 29, 2008 is acknowledged.

Claims 1-11 and 24-26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention/species, there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 112/101

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 21-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 21-23 provide for the use of amidated pectin, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 21-23 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd.* v. *Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 12-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marr et al (WO 99/37685) in view of Larsen et al (WO 98/58968).

Marr et al (Marr) teaches a process for making low ester pectin comprising the steps of obtaining a starting pectin material, contacting the starting material with a bio-catalyst and de-esterfying the starting pectin, and further de-esterifying the pectin material with an alkali (page 4 lines 9-30). Marr teaches that the pectin has a de-esterification level of less than 20%, which encompasses the range of less than 30%, 10-20%, and 12-18% as recited in claims 15-17 (page 2 lines 16-26). Marr teaches that the pectin is used in jams and dairy products (page 6 lines 9-21).

Marr is silent to the modified pectin as amidated with ammonia, to the pectin ratio of intrinsic viscosity of the starting product to the intrinsic viscosity of the amidated pectin from 1.01-1.25, preferably 1.03-1.18, most preferably 1.04-1.15 as recited in claims 12-14, to the degree of amidation of 18% or less or 10-20% or 5-30% as recited in claims 15-17, and to the Mark-Houwink factor of the pectin as recited in claims 18-20.

Larsen et al (Larsen) teaches of a pectin which is de-esterified with pectin and then amidated with ammonia. Larsen teaches that the degree of esterification is 20-45 and the degree of amidization is 0-25. Larsen teaches that the process provides for improved functional characteristics. Refer specifically to page 8 lines 1-14 and page 18 line 27 through page 19 line 16.

Regarding the modified pectin as amidated with ammonia and the degree of amidation of 18% or less or 10-20% or 5-30%, it would have been obvious to one of ordinary skill in the art at the time the invention was made to amidate the de-esterified pectin to 0-25 in order to form a product with improved functional characteristics as taught by Larsen.

Regarding the pectin ratio of intrinsic viscosity of the starting product to the intrinsic viscosity of the amidated pectin from 1.01-1.25, preferably 1.03-1.18, most preferably 1.04-1.15 and the Mark-Houwink factor of the pectin, since modified Marr teaches of substantially the same method of treatment as the instantly claimed product, including de-esterification with a biocatalyst, then de-esterification by an alkyl, and then amidization with ammonia, one of ordinary skill in the art at the time the invention was made would expect that the product as taught by modified Marr posseses substantially the same properties, including the ratio of intrinsic viscosity of the starting product to the intrinsic viscosity of the amidated pectin and the Mark-Houwink factor, as the instantly claimed invention absent any clear and convincing arguments and/or evidence to the contrary.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Bekker whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on (571) 272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lien Tran/
Primary Examiner

/Kelly Bekker/
Examiner

Art Unit 1794